

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TERRELL DEJUAN ROCHE, #612820,

Petitioner,

Case No. 20-cv-10746
Hon. Matthew F. Leitman

v.

MIKE BROWN,

Respondent.

**ORDER (1) DISMISSING ACTION WITHOUT PREJUDICE AS
DUPLICATIVE, (2) DIRECTING THAT PETITIONER'S MOTION BE
FILED IN A PRIOR CASE, (3) DENYING A CERTIFICATE OF
APPEALABILITY, AND (4) DENYING LEAVE TO PROCEED IN FORMA
PAUPERIS ON APPEAL**

Michigan prisoner Terrell Dejuan Roche has filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (*See* Pet., ECF No. 1). In the petition, Roche seeks relief from his 2014 Wayne County Circuit Court convictions for first-degree murder, second-degree arson, and possession of a firearm during the commission of a felony for which he was sentenced to life imprisonment without parole, a concurrent term of 20 to 40 years imprisonment, and a consecutive term of two years imprisonment.

However, Roche has already filed a federal habeas action arising out of these convictions and sentences, and that action remains pending in this Court. *See Roche v. Rewerts*, Case No. 19-cv-11090 (E.D. Mich.) (Roberts, J.). Judge Roberts stayed

and administratively closed that previously-filed action so that Roche could return to the state courts and exhaust certain unexhausted claims. Judge Roberts instructed Roche to move to re-open that case and to file an amended petition, with the same case number that Roche was previously assigned, upon the exhaustion of his state court remedies. Roche signed the instant “motion to re-open/amended petition for a writ of habeas corpus” (without a case number) on March 6, 2020, and it was filed as a new habeas case by the Clerk of the Court on March 19, 2020. (*See* Pet., ECF No. 1.)

The Court will dismiss this action as duplicative and/or successive to Roche’s stayed habeas case. *See, e.g., Flowers v. Trombley*, 2006 WL 724594, at *1 (E.D. Mich. March 17, 2006) (dismissing habeas petition as duplicative); *Harrington v. Stegall*, 2002 WL 373113, at *2 (E.D. Mich. Feb. 28, 2002) (same). *See also Davis v. United States Parole Comm’n*, 870 F.2d 657, 1989 WL 25837, at *1 (6th Cir. March 7, 1989) (district court may dismiss habeas petition as duplicative of pending habeas petition when second petition is essentially same as first petition). The Court will direct the Clerk of the Court to close this action and to file Roche’s current motion in his previously-filed case before Judge Roberts.

Accordingly, for the reasons stated above, the Court **DISMISSES** this action **WITHOUT PREJUDICE**. The Court further **DIRECTS** the Clerk of the Court to re-file Roche’s instant motion (ECF No. 1) in Case No. 19-cv-11090 for further

consideration. The Court makes no determination as to the merits of the petition or motion. This case is closed.

Before Roche may appeal, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c)(1)(a); Fed. R. App. P. 22(b). A certificate of appealability may issue only if a petitioner makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). When a court denies relief on procedural grounds without addressing the merits, a certificate of appealability should issue if it is shown that jurists of reason would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the court was correct in its procedural ruling. *See Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). Reasonable jurists could not debate the correctness of the Court’s procedural ruling. Accordingly, the Court **DENIES** Roche a certificate of appealability. Finally, the Court concludes that an appeal from this non-prejudicial dismissal cannot be taken in good faith. *See* Fed. R. App. P. 24(a). Accordingly, the Court **DENIES** Roche leave to proceed *in forma pauperis* on appeal.

IT IS SO ORDERED.

Dated: April 22, 2020

s/Matthew F. Leitman

MATTHEW F. LEITMAN

UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on April 22, 2020, by electronic means and/or ordinary mail.

s/Holly A. Monda

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